

**ENTERED**

March 23, 2025

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

SIMMONS BANK,

Plaintiff,

VS.

MONOCOQUE DIVERSIFIED  
INTERESTS, LLC, *et al.*,

Defendants.

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CIVIL ACTION NO. 4:24-CV-00492

**ORDER**

Before the Court are United States Magistrate Judge Richard W. Bennett's Memorandum and Recommendation filed on January 28, 2025 (Doc. #44), Defendant/Counter-Plaintiffs Monocoque Diversified Interests, LLC ("MDI") and Mary Alice Keyes' ("Keyes") (collectively, the "MDI Defendants") Objections (Doc. #54), and Plaintiff/Counter-Defendant Simmons Banks' ("Simmons") Response (Doc. #57). The Magistrate Judge's findings and conclusions are reviewed *de novo*. FED. R. CIV. P. 72(b); 28 U.S.C. § 636(b)(1); *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989). Having reviewed the parties' arguments and the applicable legal authority, the Court adopts the Memorandum and Recommendation as its Order.

This case arises from a default by Defendants MDI, Keyes, and Sean Leon Nadeau ("Nadeau") in relation to a Main Street Loan Program loan (the "Loan") that borrower MDI received from Simmons, which Keyes and Nadeau guaranteed. The Loan is evidenced by a Promissory Note dated December 10, 2020 (the "Note"). On February 9, 2024, Simmons filed its Complaint against MDI, Keyes, and Nadeau, seeking the amounts due under the Note. Doc. #1. On April 9, 2024, the MDI Defendants filed their Answer and Counterclaims, including a

conversion counterclaim and request for declaratory judgment. Doc. #9. On January 28, 2025, Magistrate Judge Bennett issued a Memorandum and Recommendation regarding several pending motions. *See* Doc. Nos. 12, 16, 28, 29, 39.

The MDI Defendants object to certain aspects of Magistrate Judge Bennett's Memorandum and Recommendation. Doc. #54. However, all of the arguments raised in the MDI Defendants' Objections have been raised for the first time in response to the Memorandum and Recommendation. "Because [the MDI] Defendants are not entitled to raise arguments for the first time in their objections to the Magistrate Judge's Report and Recommendation that were not asserted in their [briefing], these new arguments are not properly before the Court for consideration." *McPeak-Torres v. Texas*, No. CV G-12-075, 2015 WL 12748276, at \*1 (S.D. Tex. Jan. 22, 2015) (Costa, J.); *see also Freeman v. Cnty. of Bexar*, 142 F.3d 848, 851 (5th Cir. 1998) (noting that "a party who objects to the magistrate judge's report waives legal arguments not made in the first instance before the magistrate judge"). Moreover, notwithstanding the MDI Defendants' Objections, the Court agrees with Magistrate Judge Bennett's conclusions.

In conclusion, the Court adopts the Memorandum and Recommendation (Doc. #44) as its Order. As such, Simmons' Motion for Partial Summary Judgment (Doc. #39) is hereby GRANTED, and the MDI Defendants' conversion counterclaim is DISMISSED WITH PREJUDICE. The MDI Defendants' Motion for Partial Judgment on the Pleadings (Doc. #28) is DENIED as MOOT. Moreover, Simmons' Motion to Strike the MDI Defendants' Jury Demand (Doc. #16) is hereby GRANTED. In addition, because the court has granted summary judgment with respect to the MDI Defendants' conversion counterclaim, Simmons' Motion to Dismiss (Doc. #12) is DENIED as MOOT as it pertains to sections (a) through (c) of the MDI Defendants'

declaratory judgment counterclaim. Simmons' Motion to Dismiss (Doc. #12) is DENIED as it pertains to sections (d) through (i) of the MDI Defendants' declaratory judgment counterclaim.

It is so ORDERED.

**MAR 20 2025**

Date

  
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The Honorable Alfred H. Bennett  
United States District Judge